SINGAPORE REPORTS

Collector of Land Revenue v Ang Thian Soo

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 87 OF 1988
LAI KEW CHAI, CHAN SEK KEONG AND RAJAH JJ
9 FEBRUARY 1990

Land Law — Acquisition of land — Compensation — Market value of land, date for determination of — Market value as affected by improvements to land — Land Acquisition Act (Cap 152, 1985 Ed), s 33(1)(a)

This appeal is against the decision of the Land Appeals Board ('the Board') in respect of an award of compensation made under s 33(1)(a) of the Land Acquisition Act ('the Act') for the acquisition of a dwelling house on 25 March 1985 ('date of acquisition'). The acquired property was a two and a half storey detached house built on 11,325 sq ft of land in Punggol. Before February 1971, the land was vacant. Construction of the house was completed by October 1973, except for the septic tank and access road, drains and culvert which had not been completed. These works were completed between 1974 and 1975. The respondent ('the owner') bought the house in 1980 at a mortgagee's sale for $335,000. The appeal turns on the construction of s 33(1)(a) of the Act, in particular, the date at which the market value of the property should be determined. The Collector determined the lower market value at 'the earlier date', ie 30 November 1973. On appeal the Board decided that the material date for determining the market value of the house was as at the date of acquisition. In this appeal, the appellant ('the Collector') argued that the compensation payable is the lower of the market values of the house determined at each of the dates prescribed by s 33(1)(a) ('the prescribed date') by reference to the state and condition of the house existing at the date of acquisition.

Held, allowing the Collector's appeal:

(1) In *Lee Suat Hong*,[1] the Board had made a fundamental error in thinking that the acquired property were the flats, and that on 30 November 1973, the acquired property had no market value because the flats were not there at that time. The acquired property was not the flats, but the land in its developed state. The flats did not exist except as part of the land. The land existed, but in a different state and condition (at the date of acquisition) as it had a block of flats on it. The non-existence of the flats had no bearing on whether 30 November 1973 is the date for determination of market value.

(2) The Board repeated this error in this case. It extended the concept of existence in *Lee Suat Hong*'s case[1] to include the different concept of the sameness of the acquired house on 30 November 1973 and on the date of acquisition. The Board's decision that the acquired house was not the same as it was in 1973 meant no more than that certain additional works had been done to it. Changes occurring or made to land, whether physically or in their permitted use, only affect its market value and not its existence. All physical improvements to land become part of the land and improves its market value. This accords entirely with the statutory definition of 'land' in s 2 of the Act, and when the land is acquired, it is acquired with such improvements.

(3) The effect of the Board's decision is that s 33(1)(a) is construed to mean that the 'earlier date', ie 30 November 1973 ceases to have effect if the state and condition of acquired land is not the same as it was on 30 November 1973. The appeal court did not agree with this construction. The language of s 33(1)(a) provides plainly and unequivocally that the Collector's duty is to determine, by the first limb of that section, the market value as at 30 November 1973, and, by the second limb, the market value as at the date of acquisition.

(4) The words 'market value as at 30 November 1973' are open to two meanings. They may refer to the market value of the land as at 30 November 1973 having regard to its state and condition as at (i) 30 November 1973 ('method A') or (ii) the date of acquisition ('method B'). The first limb of s 33(1)(a) intends that method B should apply. The acquired house will have to be evaluated as at 30 November 1973 in its acquired state and condition as if it were in that state and condition on 30 November 1973. This construction achieves the object of the provision to enable the government to acquire land at its 1973 value but also to compensate landowners for improvements made to land after 1973 to an extent limited to their 1973 values. Further support for this interpretation is in the requirement in s 33 that the considerations in s 33(5)(a), (c) and (d) be taken into account in determining the market price.

(5) The appeal court rejected the owner's argument that, under s 33(1)(a), neither the Collector nor the Board is bound to award the lower of the two market values, but has a discretion to make an award at or between the lowest and the highest market values as determined. The express words of the section direct that the Board or Collector 'shall ... take into consideration the following matters and no others ... [the prescribed dates], whichever is the lower'. The only condition applicable is the lower of the prescribed market values.

Cases referred to

1 *Lee Suat Hong* v *Collector of Land Revenue* (Appeal No AB413 of 1982) (unreported) (not follld)
2 *Official Assignee (of the property of Prabhaker Chandulal Shah)* v *Collector of Land Revenue* [1984] 1 MLJ 155 (distd)

Legislation referred to

Land Acquisition Act (Cap 152, 1985 Ed) s 33(1)(a), (2), (3), (5)(a), (c), (d), (e)

Woo Tchi Chu (Philip Jeyaretnam with him) for the appellant.
Michael Khoo (Josephine Low (Miss) with him) for the respondent.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): This is an appeal by the Collector of Land Revenue ('the Collector') against the decision of the Land Appeals Board ('the Board') in respect of an award of compensation made under s 33(1)(a) of the Land Acquisition Act ('the Act') for the acquisition of a dwelling house on 25 March 1985 ('the date of acquisition').

The acquired property was a two and a half storey detached house built on 11,325 sq ft of land and known as 25-A, Track 24, Punggol Road. Prior to February 1971, when permission was granted to the previous owner to build the house with a septic tank, the land on which it was to be erected was vacant land. Construction of the house was completed by October 1973, except for the septic tank and the access road, drains and culvert which had not been

completed. These outstanding works were completed during 1974-1975 and the certificate of fitness was issued on 6 May 1975. The respondent in this appeal ('the owner') bought the house at a mortgagees' sale on 24 July 1980 at the price of $335,000.

The statutory provision for assessing compensation payable for acquired land applicable to these proceedings was s 33(1)(a) of the Act before it was amended in 1988. It then provided as follows:

> In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall, subject to subsections (2), (3) and (4), take into consideration the following matters and no others:
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> (a) the market value as at 30th November 1973, or the market value as at the date of the publication of the notification under section 3(1) if the notification is within 6 months from the date thereof followed by a notification under section 5 in respect of the same land or part thereof, or the market value as at the date of the publication of the notification made under section 5, whichever is the lowest;

A plain reading of the above section would require the Board to determine the market value of the acquired property as at the dates prescribed therein ('the prescribed dates'), viz (1) 30 November 1973 ('the earlier date') and (2) the date of acquisition (which expression is used herein to refer to either of the relevant prescribed dates other than the earlier date), and then to award compensation based on the lower market value so determined.

The Collector determined the lower market value as at the earlier date and awarded $236,450 ($28.88 psf). The owner appealed and the Board decided that the only market value applicable to the house was that to be determined as at the date of acquisition. On that ruling, the Board awarded compensation therefor in the amount of $670,000 ($59.16 psf) as the market value at the date of acquisition.

The Board, in its oral decision, said, without elaboration:

> As regards the law, we are of the view that the material date in this case must be the date of acquisition.

In this appeal, the Collector has contended that the decision of the Board was wrong and that the compensation payable is the lower of the market values of the house determined as at each of the prescribed dates *by reference to the state and condition of the house existing at the date of acquisition*, using the expression 'state and condition' in the widest sense to include its physical state as well as its permitted or actual use.

The Collector has also appealed against the quantum of compensation on the ground that the Board was wrong in using the property price index to determine the market value when there was evidence of comparable sales. However, this part of the appeal will become unnecessary if the Collector succeeds against the first decision of the Board. In such event, the parties have agreed that the market value of the house as at 30 November 1973 would be $260,000.

Although the Board has not explained how it arrived at its decision on the material date of evaluation, the basis is set out in the following passages in the record of the proceedings (at pp 433-434):

> Commissioner: Now we come to the difficult one in our case. At the date of acquisition, there was a property used as a residential property in every respect. At the date that is provided in the Act, November 1973, there was a building on this land, it was meant for residential use, but was it a residential property?
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> Mr Woo: I think the real question is whether this Board can give a market value to it as at 1973 and if the answer is yes, then you must apply 1973 value.
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> Commissioner: That is a point. The answer is that the Board can give a value to that residential property in that state it was without a septic tank, without culvert, without a certificate.
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> Mr Woo: Except in this case we have agreed ...
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> Commissioner: It is an uncompleted building.
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> Mr Woo: We have agreed on the figure as at 1973.
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> Commissioner: We know you have agreed.
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> Mr Woo: That has simplified it a bit.
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> Commissioner: Quantum doesn't come in. The question is was property the same as the property that was acquired in 1985. That is the difficulty isn't it? You say yes, and if we look at it from the point of view of what is fair, the popular concept now, is it fair to value it in the same way — one is completed, the other is not completed.
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> Mr Woo: I think we can look at the Act.
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> Commissioner: The *Robinson*'s case comes in. We are dealing with acquisition. If there is any doubt in interpretation, an interpretation favourable to the appellant must be given. Firstly, one has to be fair. Secondly, if there is a doubt, an interpretation favourable to the appellant has to be given.
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> Mr Woo: My interpretation is very clear. My Lord, it is at market value as at November 1973.
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> Commissioner: I think we have got your point. I will discuss it with the assessors on the legal issue. Now, we come to valuation.

The observations of the Commissioner formed the basis of the Board's decision that the house at the date of acquisition was not the *same* as it was on 30 November 1973: it was not the same as it had no septic tank, culverts and a certificate of fitness at the earlier date. The house in 1973 was not only, physically, an uncompleted building but it was also, legally, not habitable. It seems clear from the above passages that when the Board decided that the house in its acquired state was not the *same* as it was in 1973, it meant that the additional works had changed the character of the house.

It is also apparent from the record of the proceedings that the Board's decision followed its previous decision made in July 1987 in the case of *Lee Suat Hong* v *Collector of Land Revenue*.[1] In that case, the Board decided that the acquired flat, being one in a block of flats erected after

1973 on the acquired land, could not be evaluated as at the earlier date on the ground that it had not existed on such date. That decision was founded on the Board's understanding of what was decided by the Court of Appeal in *Official Assignee (of the property of Prabhaker Chandulal Shah)* v *Collector of Land Revenue*[2] (hereinafter called '*HM Forces*').

In this appeal, counsel for the owner contended that the decision of the Board was correct, having regard to its decision in *Lee Suat Hong*[1] and that of the Court of Appeal in *HM Forces*.[2] He submitted further that the acquired house should be treated as vacant land in 1973 on the ground that it was so treated by the Comptroller of Property Tax for the purpose of property tax prior to the issue of the certificate of fitness in 1975: on this basis, the acquired land was not the same as it was in 1973.

Counsel for the Collector contended that the decisions of the Board in the present case and in *Lee Suat Hong*[1] were both wrong, that the Board misinterpreted the decision in *HM Forces*[2] which properly understood, was not inconsistent with the Collector's position. He also submitted that the Collector's interpretation would lead to a consistent and uniform application of s 33(1)(a) in the following cases, whereas the Board's reasoning when applied to these examples would lead to inconsistent conclusions: (1) the house is built on vacant land after 1973, (2) the house is renovated after 1973, and (3) the house, built before 1973, is demolished and replaced with a new house after 1973.

As *Lee Suat Hong*'s case[1] was based on the Court of Appeal's decision in *HM Forces*,[2] it is necessary to examine the latter decision to see what it actually decided. In *HM Forces*,[2] the acquired building had been used as a pepper store since 1971 until January 1975 when it was acquired. The appellant owner had bought the property in July 1971 for $400,000 and in August 1972 was given permission under the Planning Act for the retention of the additions and alterations to the existing building for use as a pepper store. The property was at all material times zoned in the master plan as 'Land occupied by HM (Her Majesty's) Forces'. However, the property was never occupied by or used by the British armed forces since 1939 and it was also not disputed that Her Majesty's Forces had ceased to occupy any land in Singapore by 1975. The Collector awarded compensation in the amount of $87,637.50 and subsequently increased it to $211,972. The owner appealed to the Board which decided that, by reason of s 33(5)(e) of the Act (which provided that 'the market value of acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the master plan, whichever is the lower,...), the anticipated continued use on 30 November 1973 was as HM Forces land and as such was 'sterile'. In other words, the acquired pepper store had no economic value since a bona fide purchaser could only be expected to use it for military purposes and not as a pepper store. The Board accordingly dismissed the appeal. The owner appealed to the Court of Appeal which decided that the market value of the pepper store could not be limited by its anticipated continued use as the factual foundation (ie the continued use by HM Forces) had disappeared. The reasoning of the court is set out in the following passages (at p 156):

> In our view, the Appeals Board had erred in law in coming to the conclusion that the ascertainment of the market value of the property should be made on the basis of its market price as a piece of land occupied by Her Majesty's Forces. Since 1975 Her Majesty's Forces had ceased to occupy any land in Singapore. Accordingly, this alternative basis for evaluating the market value of such a property under s 33(5)(e) of the Act was no longer available since its foundation in fact had totally disappeared since 1975.
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> In these circumstances, the market value of the property as at 30 November 1973 within the meaning of s 33(1)(a) and (5)(e) should be assessed on the basis of its existing use. The appellant was a bona fide purchaser of the property in July 1971. He bought the property on the basis of its existing and lawful use as a store for pepper. Seeing that the appellant's purchase had taken place at a time sufficiently proximate to 30 November 1973 we are of the view that the award should have been fixed at $400,000. The appeal is allowed with costs here and below. The award is increased to $400,000.

In the second of the above passage, the Court of Appeal expressly stated that the market value of the land 'as at 30 November 1973 *within the meanings of s 33(1)(a) and (5)(e) should be assessed on the basis of its existing use*' (our emphasis). The court did not decide that the earlier date for the determination of market value was not applicable. What the court decided was that the particular factor in s 33(5)(e) limiting the market value of the acquired land (ie anticipated continued use) was not applicable because that factor had ceased to exist. In our view, the court's decision is wholly consistent with the Collector's proposition that in the present case, the house should be evaluated as at 30 November 1973 by reference to its state and condition existing as at the date of its acquisition.

In *Lee Suat Hong*,[1] the Board applied *HM Forces*[2] in this way:

> It has been submitted for the appellant in the present case that at 30 November 1973, the acquired property had no market value for the simple reason that [it] was not there at that time, that is to say, there was no flat then. Now, s 33(1)(a) also provides a formula similar in kind to s 33(5)(e) ... As regards s 33(1)(a), one has to do an exercise as to the market value as at 30 November 1973 and the market value of the acquired property as at the date of declaration and then one has to choose the lower of the [two]. In our view, in this case, we are bound by the Court of Appeal decision [in *HM Forces*]. Here, the rationale is that at 30 November 1973 the acquired property, the flat, was not there. The alternative basis of evaluating the market value of the acquired property was not

in existence. Therefore the alternative basis was not available in this case.

In our view, the reasoning of the Court of Appeal in *HM Forces*[2] was not applicable, by analogy, to *Lee Suat Hong*.[1] Section 33(1)(a) and (5)(e) are not analogous; they perform different functions. The first provision tells the Board/Collector how to determine the market value of acquired land (ie as at the two dates) and how to award compensation (ie the lower of the two market values). The second provision sets a limit to *each* of the market values to be determined under the first provision. The limit is determined by the existing or anticipated continued use of the land but such use cannot determine whether the acquired land may or may not be evaluated as at the earlier date if it is no longer the same at that date. *HM Forces*[2] was not concerned with the existence or sameness or otherwise of the acquired building in 1973 but with the anticipated continued use of the land as a factor *affecting* its market value.

In our view, the decision in *HM Forces*[2] lent no support to the reasoning in *Lee Suat Hong*[1] and in the present case. Whether these two decisions are correctly decided must depend on their own reasoning. In *Lee Suat Hong*,[1] the Board said that '... at 30 November 1973, the acquired property had no market value for the simple reason that [it] was not there at that time, that is to say, there was no flat then.' These words show that the Board made a fundamental error in thinking that the acquired property were the flats. It was not. The acquired property was the land in its developed state. In law, the flats did not exist except as part of the land. There was no question of the acquired land not being in existence: the land indisputably existed, but in a different state and condition as it had a block of flats on it. The non-existence of the flats had no bearing on whether the earlier date for determination of market value was applicable.

In the present case, the Board appeared to have extended the concept of existence (of the acquired flats) to include the different concept of the sameness of the acquired house on the earlier date and on the date of acquisition. The passages in the record of proceedings we have referred to earlier show that the Board considered that the acquired house was not in the same state and condition as it existed in 1973 because in 1973, it did not have a septic tank, access roads and culverts and a certificate of fitness had not been issued for it. In our view, this approach repeats the first error. When the Board decided the acquired house was not the same as it was in 1973, it meant no more than that certain additional works had been done to it. Changes occurring or made to land, whether physically or in their permitted use, only affect its market value, and not its existence.

The changes made to the acquired lands after 1973 in both *Lee Suat Hong*[1] and in the present case were nothing more than improvements to the land. The Board, in focusing its attention on the existence or sameness of land, lost sight of the fact that land may be improved, physically and in terms of its economic value, by the owner doing things to or affecting it. All physical improvements to land becomes part of the land. This accords entirely with the statutory definition of 'land' in s 2 of the Act, and when the land is acquired under the Act it is acquired with such improvements. Economic improvements to land, eg changing the existing use of land to a more valuable use and/or increasing its plot ratio or density, improves its market value.

The Board's decision in the present case in effect construes s 33(1)(a) to mean that the earlier date ceases to have effect if the state and condition of acquired land is not the same as it was as at the earlier date. We do not agree with this construction. In construing a statute, plain words therein should be given their plain meaning, unless the immediate or general context of the statute suggests otherwise or unless they lead to absurdity. Section 33(1)(a) provides, plainly and unequivocally, that 'in determining the amount of compensation to be awarded for land acquired under this act, the Board *shall ... take into consideration the ... market value of the land as at ...* [the prescribed dates], *whichever is the lowest*'. The said language leaves no room for doubt as to the Collector's duty, which is to determine, by the first limb, the market value as at 30 November 1973 and, by the second limb, the market value as at the date of acquisition.

The words 'market value as at [the date of acquisition]' are clear and precise. There is no difficulty in determining the market value of the acquired land in its acquired state and condition. Using the example of the block of flats in *Lee Suat Hong*,[1] the Collector will evaluate the land as improved (ie as developed with a block of flats). However, the words 'market value as at 30 November 1973', standing by themselves, are ambiguous. They may refer to the market value of the land as at 30 November 1973 having regard to its state and condition as at (i) 30 November 1973 ('method A') or (ii) the date of acquisition ('method B'). Whether method A or method B applies will make a great deal of difference to a flatowner in the position of *Lee Suat Hong*.[1] Under method A, he will be compensated for his share of the value of vacant land. Under method B, he will be compensated for his share of the value of improved land. It is one or the other. It cannot be neither.

Again, there is no difficulty with method A. Acquired land is capable of being evaluated as at November 1973 in its state and condition as at that date. The question is whether method B is feasible. Can vacant land in 1973 improved by development of a shopping complex on it in 1985 be evaluated in its improved state as if it were already improved in 1973? This is a function of valuation. There

is no reason to suggest, and it has not been suggested, that the normal principles of valuation are not applicable given adequate data to apply such principles. Indeed, counsel for both parties have agreed on the market value determined as at the date of acquisition should this court decide in favour of the Collector on this point.

We may add that if acquired land in its acquired state and condition cannot be evaluated as if it were in that condition as at the earlier date, then the local conclusion is not that neither method A nor method B applies but that the only feasible and available method of evaluation is method A. In other words, the market value of acquired land would then have to be determined as at 1973 in its 1973 state and condition.

Since both method A and method B are possible, the issue is thus reduced to ascertaining which method is intended by the first limb of s 33(1)(a). On this issue there is no disagreement between the parties as to method A. Neither the Collector nor counsel for the appellant is seeking to contend that the house should be evaluated as at 30 November 1973 in its 1973 state and condition. That leaves only method B. The acquired house will have to be evaluated as at 30 November 1973 in its acquired state and condition as if it were in that state and condition on 30 November 1973. In our view, this is the true meaning of the first limb in s 33(1)(a). It is consistent with the language thereof. It achieves the object of the provision to enable the government to acquire land at its 1973 value but also at the same time to compensate landowners for improvement made to land after 1973 to an extent limited to their 1973 values. If method A were applicable, it would follow that the government could acquire the hotel/shopping complex known as Marina Centre in Marina Bay at the market value of reclaimed land as at 1973 (or at nominal value if the land were then part of the sea) and also the complex known as Raffles City at the market value of land zoned for use as a school under the master plan. This construction would lead to such unfair and unjust results that the use of the word 'compensation' in the Act would be a mockery.

Apart from the above considerations, the following provisions in the Act lend support to the Collector's interpretation of s 33(1)(a): (i) s 33(5)(a) which directs the Collector to have regard to improvements bona fide made to the acquired land at least two years *before* the date of acquisition; (ii) s 33(5)(c) which directs the Collector to disregard any increase in the value of the land by reason of the provision of public amenities to the neighbourhood within seven years *preceding* the date of acquisition, and (iii) s 33(5)(d) which directs the Collector to take into account the value of the land voluntarily stated by the owner in any document made or delivered to a public officer where such statement is made *within* (meaning preceding) two years of the date of acquisition. Section 33 requires the considerations set out in these provisions to be taken into account in the determination of the market price. All these considerations cannot be taken into account and given effect to except on the Collector's approach.

We are aware that in s 33(3) of the Act, Parliament has used the expression 'the market value of the land as at 30 November 1973' in connection with the compensation payable for devastated land under s 33(2). Although this sentence contains the same material words as those used in s 33(1)(a), the words do not appear in the same order as in the latter section. We are of the view that, in the context of s 33(2) and (3), the words 'as at 30 November 1973 ...' refer to the state and condition of the land as at 30 November 1973 and not the market value of the land as at 30 November 1973 in its acquired state and condition. The scheme of compensation for devastated land set out in s 33(2) and (3) is a separate and different scheme from that provided for undevastated land. It would have been unnecessary to provide a separate scheme of compensation for devastated land if the first limb of s 33(1)(a) requires the Collector to determine the market value of acquired land as if it had existed in its 1973 state and condition.

Counsel for the owner contended that on the proper construction of s 33(1)(a), neither the Collector nor the Board is bound to award the lower of the two market values as that section merely requires the Board (and the Collector by virtue of s 15) to *take into consideration* the two market values as one but not the only factor to be taken into account when making the award of compensation, and therefore the Collector/Board has the discretion to make an award at or between the lowest and the highest market values as determined. In our view, this construction is contrary to the express words of the section which direct that the Board/Collector 'shall ... take into consideration the following matters *and no others* ... [the prescribed dates], *whichever is the lower*' (emphasis added). The only condition applicable is the lower of the prescribed market values.

For the above reasons, we allow the appeal and reduce the amount of the compensation award to $260,000. The Collector will be entitled to the costs of this appeal as well as the costs before the Board. There will also be an order for payment out of the security deposit for this appeal, and if applicable, for the refund of any sum paid to the owner in excess of $260,000.

Appeal allowed.

Solicitors: *Robert WH Wang & Woo; Michael Khoo & BB Ong.*

Reported by *Zarinah Marican*